Service Date: August 1, 1983

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Commission's Investigation into the Complaint:	)	UTILITY DIVISION
WIND POWER SYSTEMS, INC. P.O. Box 528 Chetek, Wisconsin 54728	)	DOCKET NO. 83.5.38 ORDER NO. 5007 83-31
Plaintiff,	)	
-vs-	)	
MONTANA POWER COMPANY 40 East Broadway Butte, Montana 59701	)	
Defendant.	)	

FINDINGS OF FACT

Background

1. On February 24, 1981, the Commission initiated Docket No. 81.2.15, the first proceeding in the matter of avoided cost-based rates for public utility purchases from qualifying cogenerators and small power producers.

2. On June 25, 1982, the Commission issued Order No. 4865b in Docket No. 81.2.15. As one objective in this order, the Commission set forth illustrative examples of negotiated payment options which it finds acceptable (see Finding Nos. 31 through 36).

3. On May 10, 1983 the Commission received a Complaint from Wind Power Systems, Inc., a Wisconsin Corporation whose mailing address is P.O.

Box 528, Chetek, Wisconsin 54728. The Complaint alleges a lack of good faith on the part of the Montana Power Company regarding the negotiation of a long-term levelized avoided cost rate. In addition, the Complaint requests this Commission to issue an order requiring the Montana Power Company to "...accept the initial year rate at a minimum of 6.4 cents per kilowatt hour as established by the Commission and to enter into a long-term contract with Wind Power Systems. . .and to order that 7% be used in figuring a levelized payment..." (see page 4, paragraph No. 2).

4. Pursuant to Commission rules the Montana Power Company answered the Complaint.

5. On June 23, 1983 the Commission received a Request for Judgment from Wind Power Systems, Inc. stating that "...the only issue remaining is the meaning and intent behind certain Commission orders...". Wind Power requests the Commission to, among other things, require that utilities accept the initial year standard rate, as established by the Commission, and to negotiate any of the five payment options in Order No. 4865b based on said standard rate; additionally, Wind Power requests that the Commission find a levelized rate of at least 8.5¢ per kilowatt hour.

6. The parties waived a factual hearing and agreed that the Commission could decide the Complaint based upon the pleadings filed.

7. On a literal reading of the orders (particularly Order Nos. 4865 and 4865b) in Docket No. 81.2.15, the Commission finds it necessary to dismiss the Wind Power Systems Complaint. The above orders are clear in their interpretation. At Finding No. 33 of Order No. 4865 the Commission states clearly the need for an annual update of avoided cost rates. Furthermore, Order No. 4865b is explicit in that it does not, at any point, require

the use of the Commission's long-term tariff of 6.4¢/kwh as a basis of a negotiated long-term rate. Contrary to Wind Power's argument, the 6.4¢ rate is not a mandated minimum rate for the life of long-term contracts. Under the Commission's orders, it is the appropriate rate only until changed by the Commission in subsequent proceedings.

8. The Commission deliberately intended to leave to qualifying facility/utility negotiations the development of nonstandard long-term payment options (see particularly Finding Nos. 32, 34 and 36 of Order No. 4865b).

9. The Commission is acutely aware of the barrier presented by the absence of tariffed long-term contracts rates and the resulting impact on a competitive marketplace at the generation level. This issue is a major focus of the current electric avoided cost rate proceeding (Docket No. 83.1.2); in this docket the Commission will determine the merit of tariffing long-term rates, which were merely illustrated in Order No. 4865b.

CONCLUSIONS OF LAW

1. The Montana Power Company is a public utility within the meaning of Montana law, Sections 69-3-101 and 69-3-601(3), MCA.

2. The Commission properly exercises jurisdiction over the rates and terms and conditions for the purchase of electricity by public utilities from qualified cogenerators and small power producers. Sections 69-3-102, 69-3-103 and 69-3-603, MCA. Section 210, Pub. L. 97-617, 92 Stat. 3119 (1978).

3. The orders filed in Docket No. 81.2.15 do not require that the 6.4¢ rate be a minimum rate for the life of long-term contracts.

ORDER

1. Wind Power Systems, Inc.'s Complaint is dismissed.

2. All requests for relief, motions and objections not previously ruled upon are hereby denied.

Done and Dated this 1st day of August, 1983 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION.

THOMAS J. SCHNEIDER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Madeline L. Cottrill
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten days. See 38.2.4806, ARM.